

Section 24: Transfer of Development Rights (TDR)

- 24.01 Intent and Purpose**
- 24.02 Definitions**
- 24.03 Applicability**
- 24.04 Use of Transferred Development Rights**
- 24.05 TDR Sending Areas**
- 24.06 TDR Allocation Options**
- 24.07 TDR Receiving Areas**
- 24.08 TDR Receiving Area Densities**
- 24.09 Procedures for the Use of TDRs**
- 24.10 TDR Examples**

Section 24: Transfer of Development Rights (TDR)

24.01 Intent and Purpose. The intent of this Section is to establish the opportunity and procedures to transfer development rights (TDRs) from outside the Gallatin County/Bozeman Area Zoning District into the Gallatin County/Bozeman Area Zoning District. Specifically, the purpose of this Section is to:

1. Implement the Gallatin County Growth Policy.
2. Provide for appropriate future development in accordance with the Gallatin County/Bozeman Area Plan and Future Land Use Map.
3. Preserve open space, scenic views, critical and sensitive areas, and natural hazard areas.
4. Conserve agriculture and forestry uses of land.
5. Protect lands and structures of aesthetic, architectural and historical significance.
6. Retain open areas in which healthful outdoor recreation can occur.
7. Ensure the owners of preserve, conserved or protected land may make reasonable use of their property rights by transferring their right to develop to eligible areas.
8. Provide a mechanism whereby development rights may be reliably transferred.
9. Ensure that development rights are transferred to properties in areas or zoning districts that have adequate community facilities, including transportation, to accommodate additional development.

Definitions. The definitions below apply to this Section.

1. **Application for the Use of TDRs.** The official application form required to be submitted by a TDR Applicant to the TDR Manager in order to obtain approval for the use of TDRs.
2. **Baseline Density.** The maximum density as established within each zoning sub-district when developers cannot or choose not to transfer a Development Right. Development at or below baseline density does not require compliance with TDR requirements.
3. **Density.** The number of Development Rights or parcels per acre of land.
4. **Development Right.** The right to create a Dwelling Unit or the right to create a parcel as a result of a Subdivision.
5. **Gallatin County Transfer of Development Rights Administrative Guidelines (Administrative Guidelines).** The official document used by the TDR Manager to administer the Gallatin County TDR Program. The Administrative Guidelines are on file with the Gallatin County Planning Department.
6. **Transfer of Development Rights (TDR).** Transfer of Development Rights, or TDRs, is a technique that encourages the voluntary transfer of growth from places where development is discouraged (*sending areas*) to places where development is encouraged (*receiving areas*).
7. **TDR Applicant.** A party who wishes to increase density above the Baseline Density and submits an Application for the Use of TDRs.
8. **TDR Deed of Attachment.** A document required to be recorded by this Section that indicates the subject TDR is not longer attached, affixed or appurtenant to the sending parcel but is, as the result of the transfer of the Development Right to a receiving parcel, attached, affixed and made appurtenant to the receiving parcel.
9. **TDR Deed of Transfer.** A document required to be recorded by this Section that indicates the fee owner of the sending parcel no longer has fee ownership of the transferred Development Right and the owner of the receiving parcel now has fee ownership of the Development Right.

10. **TDR Deed Restriction.** A document required to be recorded by this Section that places a restriction revocable only by approval of the Gallatin County Commission on further subdivision of either a portion of the parcel or the entire parcel, depending upon the number of Development Rights transferred and any remaining development potential.
11. **TDR Identification Number.** The official number assigned to each Development Right existing on each tract of record as of the date of adoption of this Section.
12. **TDR Manager.** The Gallatin County Planning Director or authorized representative.
13. **TDR Receiving Area.** A designated area where development above Baseline Density is permitted when an applicant complies with all applicable regulations including the TDR requirements of this Section.
14. **TDR Registry.** The official records of the TDR Manager that assists the TDR Manager in tracking and monitoring the use of TDRs including the parcels upon which TDR Deed Restrictions have been recorded, all transfers of TDRs, and the parcels upon which TDRs attach.
15. **TDR Sending Area.** Is an area where the landowner has chosen to exercise the TDR option in accordance with this Section.

24.03 Applicability. The TDR option is available to properties designated as Moderate-Intensity Development on the Gallatin County/Bozeman Area Future Land Use Map and having a zoning designation of A-S, R-S or R-O.

Development proposals, which exceed the permitted number of dwelling units established in the underlying zoning district (Baseline Density), must comply with the TDR requirements set forth in this Section.

24.04 Use of Transferred Development Rights. TDRs cannot be used in any manner not expressly authorized by this Section. TDRs may only be sold, purchased, or otherwise transferred or received, in accordance with Gallatin County Transfer of Development Rights Administrative Guidelines.

24.05 TDR Sending Area. TDR sending areas include all lands under the jurisdiction of the Gallatin County Growth Policy, outside of existing zoning districts, unless lands within the zoning district have been approved as a sending area pursuant to the zoning regulation establishing the zoning district. TDRs may only be sent or transferred in accordance with Gallatin County TDR Administrative Guidelines and the requirements set forth in this Section. TDRs shall not be sent from any real property included in the boundaries of a Rural Cluster Development (RCD) project, created pursuant to the Gallatin County Subdivision Regulations.

24.06 TDR Allocation Options

A TDR Applicant wishing to increase density above the Baseline Density may provide TDRs created pursuant to an acreage-based calculation or a value-based calculation. Every TDR the TDR Applicant must acquire to obtain the proposed density shall have been determined by only these two methods. If portions of a tract of record are not subject to an existing TDR Deed Restriction, and if a second TDR Applicant desires to transfer TDRs from the same sending parcel, the second TDR Applicant may at that later time create additional TDRs up to the total number allocated to the parcel using either method.

1. **Acreage-Based Calculation.** The number of TDRs may be based on the following: For each tract of record greater than 20 acres, a TDR Applicant may use TDRs based on an allocation rate of 1 TDR for each 20 acres. The presence of each existing Dwelling Unit requires a Development Right to remain with the tract of record. The Administrative Guidelines include several examples. The following are examples:
 - a. For a tract of record of 160 acres with one existing Dwelling Unit, a total of (7) TDRs.
 - b. For a tract of record of 85 acres with no existing Dwelling Units, a total of four (4) TDRs.
 - c. For a tract of record of 18 acres with one existing Dwelling Unit, zero (0) TDRs.
 - d. For a tract of record of 18 acres with no existing Dwelling Units, no TDRs but one (1) Development Right. For a tract of record of 34 acres with one existing Dwelling Unit, two (2) TDRs.
2. **Value- Based Calculation.** The number of TDRs may be based on the following: The number of TDRs equal to the reduction in market value upon recordation of a TDR Deed Restriction divided by the value-based calculation factor (\$XX,XXX.XX).
 - a. The reduction in market value upon recordation of a TDR Deed Restriction shall be determined by a licensed real estate appraiser and in compliance with generally accepted appraisal methods.
 - b. Gallatin County is not responsible for the costs associated with determining the number of TDRs through this method.
 - c. The following is an example: A TDR Applicant may use a TDR obtained from an owner of a 640-acre tract of record where the Applicant recorded a TDR Deed Restriction signed by the landowner on only 160 acres of the tract of record. Thus, 480 acres would not be subject to the TDR Deed Restriction. Assume that the value estimate concludes that the recordation of the TDR Deed Restriction on the 160 acres would reduce the value of the entire 640 acres by \$200,000.

Assume that the value-based calculation factor in effect when this TDR Deed Restriction is proposed is \$20,000. (Alternative: The Value-Based Calculation Factor is fixed at \$20,000.00.) The \$200,000 would be divided by \$20,000 to determine that the landowner would be granted ten (10) TDRs upon recordation of the TDR Deed Restriction for the 160 acres. Therefore, the landowner would have 10 TDRs, and 3 Development Rights remaining as a matter of right pursuant to the density requirements in the Gallatin County Subdivision Regulations. But the landowner may still have, under the Acreage-Based Calculation, 24 TDRs remaining (480 divided by 20 equals 24). Since the landowner has a current home on the property, the landowner would have 23 TDRs that could be transferred at another time. And the landowner would still have one additional Development Right that could be used on the tract of record.

- d. A TDR shall not be granted for any value reduction less than the full amount of the Value-Based Calculation Factor.

24.07 TDR Receiving Areas. TDR receiving areas include all lands designated as Moderate-Intensity Development on the Gallatin County/Bozeman Area Future Land Use Map and having a zoning district designation of A-S, R-S or R-O.

24.08 TDR Receiving Area Dwelling Unit Densities. Any development proposal which exceeds the permitted number of lots or dwelling units established in the underlying zoning district (Baseline Density) shall only increase density above the Baseline Density in accordance with the TDR requirements set forth below:

1. **TDR Densities.** TDRs are required to exceed Baseline Density. For each lot or dwelling unit in excess of the Baseline Density, the number of lots or dwelling units a TDR Applicant may obtain above Baseline Density for each TDR acquired is based on the following density categories:

Density Category	Proposed Development Density
Low	In developments where the desired average density is one unit per acre or greater, one lot or dwelling unit above Baseline Density per TDR obtained.
Medium	In developments where the desired average density is greater than one unit per acre but not greater than five units per acre, two lots or dwelling units above Baseline Density per TDR obtained.
High	In developments where the desired average density is greater than five units per acre, four lots or dwelling units above Baseline Density per TDR obtained.

Notes:

- a) Only whole TDRs shall be used to satisfy the density requirements.*
- b) The TDR requirement for additional lots or units shall apply to all lots or dwelling units within a proposed development based on the density of the overall development, not on the size of the individual lot.*
- c) For the purpose of determining the density category of a development, the development parcel of site shall exclude all land dedicated for public use.*

24.09 Procedures for the Use of TDRs.

1. General.

- a. An applicant wishing to increase density above the Baseline Density (“TDR Applicant”) shall comply with these requirements and the requirements of the TDR Guidelines. TDRs shall only be created, transferred, used and attached only as provided in this Section and the TDR Administrative Guidelines.
- b. A TDR may be used to increase density above the Baseline Density only by submitting and receiving initial and final approval for an Application for the Use of TDRs (“TDR Application”) and recording a TDR Deed Restriction(s) on the parcels from which the Development Rights were transferred, recording a TDR Deed(s) of Transfer that transfers ownership of the Development Rights to the Applicant, and recording a TDR Deed(s) of Attachment that indicates the Development Rights transferred and used by the Applicant to increase density above the Baseline Density are attached, affixed or made appurtenant to the receiving parcel.
- c. As described below in **subsection 2**, the Applicant shall: (i) submit a completed Application along with drafts of the proposed TDR Deed Restriction(s), TDR Deed(s) of Transfer and TDR Deed(s) of Attachment; (ii) the TDR Manager reviews the Application and may grant initial authorization or deny the Application; (iii) if granted initial authorization, the Applicant submits an application for subdivision or other required development approval; (iv) if the subdivision application or development proposal is approved, and prior to final plat approval or final zoning approval for the development, the Applicant submits to the TDR Manager all required TDR Deed Restrictions, TDR Deeds of Transfer and TDR Deeds of Attachment for final approval for the Application; and (v) the Applicant records all required TDR Deed Restrictions, TDR Deeds of Transfer and TDR Deeds of Attachment.

- d. A note on the subdivision final plat or zoning approval document (PUD or CUP) shall describe all TDRs affixed or made appurtenant thereto, including the identification number of each individual TDR. The TDRs shall become permanently affixed or appurtenant to the receiving parcel upon recordation of the final subdivision plat or final zoning approval document.
- e. The TDR Manager shall record in the TDR Registry that the TDRs, identified by identification number, have been attached, affixed or made appurtenant to a receiving parcel and are no longer available for subsequent transfer.
- f. The Applicant shall be responsible for supplying all information required by this Section and the TDR Administrative Guidelines, for providing all required instruments in the proper form and for paying all costs of recordation.
- g. The Applicant shall record all TDR Deed Restrictions, TDR Deeds of Transfer and all TDR Deeds of Attachments simultaneously and, if part of a subdivision application, along with the final plat.

h. **Procedures.**

- a. **TDR Application.** The TDR Applicant shall apply for approval of the use of TDRs by submitting to the TDR Manager a completed TDR Application and the applicable fee. The Application shall, among other required items including a required evaluation report, identify the specific parcels from which TDRs will be transferred, and, as provided below, contain drafts of the proposed TDR Deed Restriction(s), drafts of the proposed TDR Deed(s) of Transfer, drafts of the proposed TDR Deed(s) of Attachment, along with any other information required by the TDR Manager or the TDR Administrative Guidelines.

- b. **Review of the TDR Application/Initial Authorization.**

- 1. Upon submittal of a TDR Application, the TDR Manager shall determine whether the TDR Application and the proposed use of TDR's comply with the requirements of these Regulations; if so, the TDR Manager shall grant initial authorization of the Application.

2. The initial authorization of the Application only confirms the development proposal is in compliance with this Section. The initial authorization does not guarantee the development proposal will receive any other required approval or that the proposal in compliance with any other provisions of these Regulations.
 3. If the parcels from which TDRs are being transferred change after initial authorization of the Application, the Applicant shall, prior to submitting all required documents for final approval of the Application, obtain approval from the TDR Manager for the use of TDRs from different sending parcels.
- c. **TDR Deed Restriction.** For each TDR the Applicant must obtain, the Applicant shall complete and record a TDR Deed Restriction. The proposed TDR Deed Restriction shall use a form prescribed by Gallatin County and shall at a minimum contain the following:
1. The number of acres which the TDR Deed Restriction removes from the calculations of maximum allowed density for the purpose of determining the maximum number of additional parcels, if any, that can be created from the sending parcel;
 2. A statement of the number of TDRs created by the TDR Deed Restriction in compliance with the TDR allocation method selected by the sending parcel owner;
 3. The identification numbers assigned to these TDRs;
 4. Statements that the TDR Deed Restriction runs with and binds the sending parcel in perpetuity, that the grantee of the TDR Deed Restriction is Gallatin County (with the possible addition of a land trust or non-profit organization authorized by Gallatin County) and that the TDR Deed Restriction may be enforced by the County or any grantees so authorized by the County;
 5. A statement that the TDR Deed Restriction does not convey a right of access to the public and that the property owner as well as heirs, successors and assigns shall retain exclusive right to access and use subject to the terms of the TDR Deed Restriction; and
 6. The written consent of all lien holders and other parties with an interest of record in the sending parcel.

- d. **TDR Deed of Transfer.** For each TDR the Applicant must obtain, the Applicant shall complete and record a TDR Deed of Transfer using a form prescribed by Gallatin County and in compliance with the TDR Administrative Guidelines. A deed of transfer shall contain the following:
- a. A legal description and map of the sending parcel(s).
 - b. A statement that all provisions of the deed of transfer shall run with and bind the sending parcel and shall be enforced by the County.
 - c. The names of the grantor and grantee of the TDRs.
 - d. A statement that the grantor grants and conveys to the grantee a specified number of TDRs from the sending parcel including the identification numbers for each TDR transferred.
 - e. A covenant by which the grantor acknowledges that the Grantor has no further use or right of use with respect to the TDRs being transferred.
 - f. Proof of the execution and recordation of a TDR deed restriction on the sending parcel.
 - g. The signature of the TDR Manager, indicating that the TDR Manager has reviewed the deed of transfer for completeness.
- e. **TDR Deed of Attachment.** For each TDR the Applicant must obtain, the Applicant shall complete and record a TDR Deed of Attachment using a form prescribed by Gallatin County and in compliance with the TDR Administrative Guidelines. A TDR Deed of Attachment shall contain the following:
- 1. The names of the grantor and grantee of each TDR;
 - 2. A legal description of the sending parcel and receiving parcel;
 - 3. The identification numbers of the TDRs;
 - 4. The TDR Manager's tracking number for the TDR Deed Restriction; and
 - 5. The TDR Manager's tracking number for the TDR Deeds of Transfer corresponding to the TDRs.

f. **Final Application Approval/Recordation.**

1. After initial authorization of the Application, and upon approval of a preliminary plat or other required zoning approvals, the TDR Manager shall conduct a final review of the Application and grant final approval if all required executed originals of the TDR Deed Restriction(s), TDR Deed(s) of Transfer and TDR Deed(s) of Attachment comply with these Regulations.
2. Upon final approval of the Application, and, if the TDRs are used as part of a subdivision application, and along with recording of the final plat, the Applicant shall record in the records of the Gallatin County Clerk and Recorder all TDR Deed Restrictions, TDR Deeds of Transfer and TDR Deeds of Attachments.

- g. **Appeals.** Any appeal of the TDR Manager decision regarding shall be conducted in accordance with the provisions set forth in Section 32 of these Regulations.

24.10 TDR Examples.

- a. **Agricultural-Suburban District.** A 40-acre parcel in the A-S zone, under the Standard Development Option, has a baseline maximum density of five dwelling units or one dwelling unit per eight acres. A developer chooses the TDR Option in order to achieve a development density of two dwelling units per acre. Of the 80 dwelling units that would result from a density of two dwelling units per acre, five would be allowed as baseline density and the other 75 dwelling units would be additional lots. The applicable density category is Medium regardless of lot size. The Medium Density category applies to this project because the average density would be two dwelling units per acre with the use of TDRs. Since only whole TDRs may be transferred, 38 TDRs must be provided to achieve 80 total lots ($2 \times 38 = 76 + 4 = 80$).
- b. **Residential-Suburban District.** A 20-acre parcel in the R-S zone, under the Standard Development Option, has a baseline maximum density of one dwelling unit per acre, allowing up to 20 one-acre lots within the parcel. A developer chooses the TDR Option in order to achieve a development density of four dwelling units per acre. Of the 80 dwelling units that would result from a density of four dwelling units per acre, 20 would be allowed as baseline density and the other 60 dwelling units would be lots obtainable only through the use of TDRs. The applicable density category is Medium regardless of whether some lots are larger than an acre. The Medium Density category applies to this project because the average density would be four dwelling units per acre. This project would require 30 TDRs to achieve 80 lots ($2 \times 30 = 60 + 20 = 80$).
- c. **Residential-Office District.** All multi-family residential dwelling units that are not located above ground-floor commercial buildings must utilize the TDR Option. A developer chooses the TDR Option in order to build a free-standing multi-family residential building on five acres of land at the maximum density of 12 dwelling units per acre. All 60 dwelling units would be additional units, and would fall into the High Density category in which four additional dwelling units are allowed per TDR. The developer would be required to provide 15 TDRs for this project ($4 \times 15 = 60$).